Radio Programs in the Public Interest

Answers to the radio industry's objections to the FCC's new standards of judging the public service of radio.

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July, 1946

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THE most promising move for expanding the service of radio to the public was made by the Federal Communications Commission in March with the publication of a report on "Public Service Responsibility of Broadcast Licensees." After analyzing many types of program structure the report sets forth standards of "public interest" which it will take into account in the future in granting and renewing all radio licenses.

Those standards are: *first,* that controversial questions should be fairly dealt with from all sides, and adequate time be provided for presentation of important public questions; *second,* that local issues and talent should be adequately represented in radio programs; *third,* that every station should put on a reasonable number of sustaining programs, that is, those not commercially sponsored, and at desirable listening hours; and *fourth,* that advertising excesses should be minimized.

The Commission's proposals have been intemperately attacked by leaders of the radio industry mainly on the ground that they constitute censorship. They argue that the Commission has no authority to consider distribution of time on the air, and to do so threatens later control of the content of programs. They charge that the proposals abridge freedom of speech and are thus unconstitutional. Their other main objections are all covered in this leaflet.

THE ACLU, which would certainly be among the first to resist any threat of radio censorship, has wholeheartedly endorsed the report and the standards set. For years the Union has urged a provision in law to accomplish just this result by requiring every radio station in return for its license to set aside non-commercial time for discussion of public issues and for other programs of public interest. Congress itself agreed in principle in the 1934 act in referring such a proposal to the Commission for study.

Industry spokesmen roundly criticize the ACLU for supporting regulation of radio when the Union is so vigorous an opponent of regulation of the press and motion pictures. The ACLU would be in favor of equal freedom for radio if there were unlimited radio channels. Comparison with the press and motion pictures where facilities are theoretically unlimited, is unsound as long as there must be a choice by a government agency between applicants for the limited number of wave-lengths, and a responsibility to see that conditions of licenses are observed. The ACLU position does not favor the principle of government regulation, but accepts it as a practical necessity.

Censorship is no more involved in the FCC standards than in the Post Office Department's requirement that in return for reduced second-class or fourth-class mailing privileges, periodicals must either not be designed primarily for advertising, or, in case of fourth-class, reading matter must constitute 25%. Under the Supreme Court's "Esquire" decision, the Post Office Department cannot use its power over the allocation of material in magazines to control content in any way.

There is very little danger that the FCC would trespass beyond allocation of time to content of programs except to determine that the various types prescribed are in fact of the character claimed. If it did, the courts, the industry and public opinion would all stand in the way. The ACLU would be among the first to resist.

The opposition of the industry is evidently based not so much on fear of censorship, as its spokesmen allege, as on the idea that radio licenses once granted become a vested private interest over which licensees alone should have control, except in cases of flagrant misuse of their privileges. But the law properly requires periodic review of performance to insure that they continue to operate in the public interest.

Station-owners also resist the restrictions placed upon their freedom to sell all possible time to sponsors, and thus to make the largest profits. The FCC requirements that they furnish more programs of public interest and develop local programs may reduce somewhat their profits; and they certainly will require more work on the part of station program-directors, less on the part of advertising agencies; less record-playing, more initiative. That should result in a more diversified, and presumably better program structure.

This leaflet presents the objections raised by the industry and our answers. The purpose of the pamphlet is to state the facts for public information and to enable those who so desire to express their views to the Federal Communications Commission, Washington 25, D.C.

Objection 1. *The industry claims that there is no authority in law for the standards fixed by the Commission.*

Answer. The Commission is empowered by Act of Congress to grant and renew licenses on the basis of "public interest, convenience and necessity." The standards fixed merely spell out the Commission's concept of the public interest. The authority and obligation to do so are clear.

Objection 2. *The industry claims that the Commission's fixing the proportionate character of programs violates the first amendment to the Constitution pro-*

hibiting Congress from passing any law abridging freedom of speech.

Answer. Freedom of speech is not abridged. It is encouraged. The standards fixed provide for more speech, not less,—and more in the public interest. They do not prescribe in any way the content of programs, and therefore do not interfere with anybody's speech. To determine whether programs conform to the requirements does not involve examining their contents; merely their character.

Objection 3. *The standards constitute censorship of radio programs.*

Answer. Censorship is a big word but the answer above should be sufficient. If the Commission should attempt to pass upon the contents of programs in estimating whether a station in fact presents public questions or local issues, it could be resisted in the courts under the clear Congressional proviso that "nothing in the act shall be understood or construed to give the Commission the power of censorship over radio communications."

Objection 4. *The FCC report assumes that the number of radio stations is physically limited by the number of available wave lengths, but the new "frequency modulation" system of broadcasting opens up so many new wave-lengths,—many more than the likely number of applicants,—that selection will no longer be necessary. Everybody desiring to go into broadcasting can get a license.*

Answer. This objection is academic. Radio is a long way from having unlimited FM wave-lengths, and may never have them. If they should in time replace standard broadcasting, the Commission may then find much less need for selection among applicants. But even if no selection should then be necessary nationally, there doubtless would be a limited number of wave-lengths available in larger communities.

Objection 5. *Facsimile broadcasting of printed matter is fast developing. If these standards are fixed, the FCC may thus regulate the press. Television is developing; that may be censored, too.*

Answer. Nothing in the present report suggests control of facsimile newspapers or television. When that issue arises, it will be time to consider whether the public interest would be served by requirements concerning the amount of space or attention given to advertising in relation to news and opinion. The Post Office Department now requires a distribution of reading and advertising in second-class and fourth-class mail; and there is no more reason to fear censorship of facsimile newspapers and television than of second-class or fourth-class publications.

Objection 6. *The present system is working well. Why change it? The report opens the door to re-*

fusals to renew for minor matters. Licenses should be revoked or denied only for serious offenses.

Answer. The present system is not working well, as evidenced by the volume of complaints of the over-commercialization of radio. Congress long ago ordered a study of public service programs with a view to allocating time in the public interest. It was made by the Commission. Nothing was done in view of the industry's promises to accomplish the same ends. The promises have not been realized. The FCC standards are preferable to requirements in law which would be inelastic.

Furthermore, this argument implies that station-owners are more or less free to operate without regard to any positive standards of public interest. The law is clear to the contrary. Since there are many applicants for the limited wave-lengths, those who hold licenses should be held to fairly uniform standards of performance. Applicants get their licenses by promising to maintain standards of performance in the public interest. They should be held to them by review every three years as is now provided by the Communications Act.

The Commission has never revoked a license for failure to live up to general standards of public interest. The comparatively few revocations have all been for gross improprieties, and where challenged, have been sustained by the courts and applauded by the public and the industry. Upon findings of unsatisfactory performance, warnings by the Commission should be sufficient to secure compliance. In any event the Communications Act provides an adequate means of review by the courts.

Objection 7. *Many commercially-sponsored programs are quite as much in the public interest as non-commercial sustaining programs. The report falsely assumes that sustaining programs are more in the public interest.*

Answer. It is true that many commercially-sponsored programs are of high character and clearly in the public interest, but most are geared to advertisers' interests with only incidental considerations of their public service. The requirement that sustaining time be increased, local cooperation encouraged and advertising decreased would presumably force radio program-managers to take responsibility for improving programs. With public response as the sole test they would be far freer than now to devise means for greatly enlarging the variety of radio audience appeal.

Objection 8. *One decision by the FCC prohibited a radio station-owner from expressing his personal and editorial opinions concerning a political candidate (the Mayflower case). Thus the Commission has*

already assumed control of program content and may extend it.

Answer. In the particular case cited, the station-owner used his license by employing radio "technique" to support a particular political candidate for office. The Commission prohibited this because a station-owner has an unfair advantage in expressing his own political views, since there is no adequate means for reply. Station-owners have sufficient latitude in slanting news and programs according to their own concepts, and have never been interfered with by the Commission in doing so. The case cited was an isolated instance of gross impropriety and in 1938 the industry strongly approved the decision. Nothing in the decision justifies fear of any general censorship of program content.

Objection 9. *The Commission's proposals involve future dangers which outweigh any possible present advantages.*

Answer. It is of course conceivable that any regulations might be extended in future to a censorship of programs. But so could the F.C.C.'s inherent power of granting and renewing licenses in the "public interest." Courts and public opinion would create powerful obstacles to such an unlawful censorship, expressly prohibited.

Against this remote possibility the present advantages to the entire radio audience of setting aside time in the public interest free from commercial considerations are clear in the light of the recognized abuses.

These are the objections and answers. We submit that they make out a clear case in support of the Commission's regulations in the public interest. We urge all who support the position taken by the ACLU to address the FCC, Washington 25 promptly.

Copies of a statement reprinted from the Congressional Record on the FCC report by the Radio Committee of the ACLU will be sent free on request, together with a reprint of a radio speech on the report by former Judge Thurman Arnold, speaking for the ACLU.

Scanned from the National Association of Educational Broadcasters Records
at the Wisconsin Historical Society as part of
"Unlocking the Airwaves: Revitalizing an Early Public and Educational Radio Collection."

A collaboration among the Maryland Institute for Technology in the Humanities,
University of Wisconsin-Madison Department of Communication Arts,
and Wisconsin Historical Society.

Supported by a Humanities Collections and Reference Resources grant from
the National Endowment for the Humanities

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